



DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submissions for OMB Review; Comment Request; H-2A Foreign Labor Certification Program; Labor Certification Letter for H-2A Agricultural Foreign Workers, H-2B Foreign Labor Certification Program; and Application for Prevailing Wage Determination

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting four related Employment and Training Administration (ETA) sponsored information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). The ICR titles are H-2A Foreign Labor Certification Program, Labor Certification Letter for H-2A Agricultural Foreign Workers, H-2B Foreign Labor Certification Program, and Application for Prevailing Wage Determination.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: A copy of these ICRs with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, <http://www.reginfo.gov/public/do/PRAMain>, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about these requests to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street, N.W., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

AUTHORITY: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act (INA) requires the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States (U.S.) to perform certain skilled or unskilled labor will not, by doing so, adversely affect wages and working conditions of U.S. workers similarly employed. The Secretary must also certify that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may petition for any temporary skilled or unskilled foreign workers, it must submit a request for certification to the Secretary containing the elements prescribed by the INA and regulations. See 8 U.S.C. 1011(a)(15)(H)(ii)(a), 1011(a)(15)(H)(ii)(b), 1184(c), and 1188 and 8 CFR 214.2(h).

The DOL currently obtains OMB approval for the subject information collections under Control Numbers 1205-0466, Foreign Labor Certification Instruments, and 1205-0404, Labor Certification Letter for H-2A Agricultural Foreign Workers. In order to improve internal administration of the information collection requirements, the DOL is taking this opportunity to rename OMB Control Number 1205-0466 and to separate out the three different sets of information collection requirements under three unique Control

Numbers. While the Department believes it must now submit the information collections approved under Control Number 1205-0404 and 1205-0466 as separate ICRs, in order to maintain OMB clearance for the existing requirements, the DOL intends to merge the ICRs via a non-material change request to the 1205-0466 ICR. Such a request would be made upon receiving OMB approval of the current actions and would not change the information collection requirements in any way; the DOL would simultaneously seek to discontinue Control Number 1205-0404.

The first of current actions being submitted for OMB approval is revised Control Number 1205-0466 that will contain Form ETA-9142A, H-2A Application for Temporary Employment Certification and Appendix A; and most regulatory information collection requirements applicable to the H-2A program. The H-2A program enables employers to bring nonimmigrant foreign workers to the U.S. to perform agricultural work of a temporary or seasonal nature as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(a). Information obtained on Form ETA-9142A provides the basis for the Secretary's determination whether no U.S. workers are available. Form ETA-9142A, collects information to permit the Department to meet its statutory responsibilities for administering the H-2A temporary labor certification program.

The second current ICR being submitted for OMB approval is Control Number 1205-0404, which specifically has to do with the notification requirements of the 50 percent rule in the H-2A program and is being submitted without changes. Regulations 20 CFR 655.135(d) stipulates that an employer must continue to provide employment to any qualified and eligible U.S. worker who applies to the employer until 50 percent of the work contract period, under which the foreign worker is in the job, has elapsed. The

notification required under the regulations at 20 CFR 655.135(c) is written by the employer and sent to the applicable State Workforce Agency (SWA), if the foreign worker begins traveling to the employer's place of work any time after the three days prior to the first date of need specified in the work contract. The SWA uses the information to calculate the end of the 50 percent rule referral requirements. The regulations also specify other notifications the employer must make (e.g., remind the worker of the requirement to leave the U.S. at the end of the certified period for work or upon separation from the employer, unless the worker is being sponsored by a subsequent employer; and informing the DOL of H-2A workers who have abandoned their jobs or been terminated). The ETA uses Form ETA-9144 to inform employers of these obligations.

The first new ICR the DOL is currently submitting has been issued ICR Reference Number 201210-1205-001, H-2B Foreign Labor Certification Program. This new ICR will contain forms and most regulatory information collection requirements applicable to the H-2B program. Specifically, it will contain Form ETA 9142B, H-2B Application for Temporary Employment Certification and Appendix B.

The second new ICR the DOL is submitting has been assigned ICR Reference Number 201210-1205-002, Application for Prevailing Wage Determination, will contain Form ETA-9141, Application for Prevailing Wage Determination. That form is applicable to the H-2B, H-1B, H-1B1, E-3, and PERM programs.

On April 8, 2012, the OMB approved changes to the information collected under Control Number 1205-0466, in accordance with the 2012 H-2B final rule published on February 21, 2012 (77 FR 10038). On April 27, 2012, the DOL received from the OMB

a six-month approval to revert to the old information collection requirements. The approval allowed the ETA to comply with a Federal Court for the Northern District of Florida, Pensacola Division, injunction preventing the DOL from implementing the 2012 H-2B Final Rule. (Bayou Lawn & Landscape Services, et al. v. Hilda L. Solis, et al., 12-cv-00183-RV-CJK.). With minor format changes (e.g., form names), these ICRs maintain the existing requirements.

The information collections covered in this notice are subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The current approval for both existing Control Numbers is scheduled to expire on October 31, 2012; however, it should be noted that existing information collections submitted to the OMB receive a month-to-month extension while they undergo review. Changes only take effect upon OMB authorization. For additional information, see the related notice published in the Federal Register on August 15, 2012 (77 FR 49025).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within 30 days of publication of this notice in the Federal Register. In order to help ensure appropriate consideration, comments should mention the applicable OMB Control

Number or ICR Reference Number as shown in the information collection listing at the end of this notice. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The ICRs are summarized as follows:

Agency: DOL-ETA.

Title of Collection: Labor Certification Letter for H-2A Agricultural Foreign Workers.

OMB Control Number: 1205-0404.

ICR Type: Extension without changes of a currently approved collection.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 361.

Total Estimated Number of Responses: 361.

Total Estimated Annual Burden Hours: 90.

Total Estimated Annual Other Costs Burden: \$0.

Title of Collection: H-2A Foreign Labor Certification Program.

OMB Control Number: 1205-0466.

ICR Type: Revision of a currently approved collection.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 7,218.

Total Estimated Number of Responses: 147,856.

Total Estimated Annual Burden Hours: 44,084.

Total Estimated Annual Other Costs Burden: \$1,529,370.

Title of Collection: H-2B Foreign Labor Certification Program.

ICR Reference Number: 201210-1205-001.

ICR Type: Request for new OMB Control Number.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 5,387.

Total Estimated Number of Responses: 32,686.

Total Estimated Annual Burden Hours: 15,333.

Total Estimated Annual Other Costs Burden: 0.

Title of Collection: Application for Prevailing Wage Determination.

ICR Reference Number: 201210-1205-002.

ICR Type: Request for new OMB Control Number.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 461,177.

Total Estimated Number of Responses: 890,501.

Total Estimated Annual Burden Hours: 398,833.

Total Estimated Annual Other Costs Burden: \$29,776,872.

Dated: October 24, 2012.

Michel Smyth,

Departmental Clearance Officer.

BILLING CODE: 4510—PN—P

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